



California Fair Political Practices Commission

September 25, 1985

Russ Sanford
R. E. Sanford & Associates
9100 Billy Mitchell Blvd.
Roseville, CA 95678

Re: Your Request for Advice
Our File No. A-85-182

Dear Mr. Sanford:

Thank you for your letter requesting additional advice concerning your duties under Government Code Sections 87400, et seq.¹ This letter confirms the telephone advice I gave you on September 17, 1985.

You were previously employed as Deputy Director of the Division of Off-Highway Motor Vehicle Recreation (OHMVR) in the Department of Parks and Recreation. You have recently left state service and are conducting business in the private sector. Your business activities concern recreational land-use.

On May 1, 1985, I provided you with general advice concerning your situation at the request of Mr. William Briner, Director of the Department of Parks and Recreation (our File No. A-85-080). In that letter I advised you that you may not, for compensation, represent, aid, advise, counsel, consult or assist in representing any person before any court or state administrative agency in connection with any proceeding involving specific parties in which you participated when employed as Deputy Director. Sections 87401 and 87402. You have provided some additional information about your situation and have requested more specific advice regarding this matter.

You explained in your letter that as Deputy Director of the OHMVR you supervised persons who were responsible for (1) the

¹ All statutory references are to the Government Code unless otherwise indicated.

operation and management of the State Vehicular Recreation Areas (SVRAs) and (2) the Headquarters Staff activities connected with planning, acquisition, and development of SVRAs and the granting of special funds to local jurisdictions for the planning, acquisition, development, and operation of off-highway vehicle facilities. All planning, acquisition, development, and grant operations required approval by the seven-member OHMVR Commission. Furthermore, the Legislature must decide whether to appropriate funds for any projects approved by the OHMVR Commission.

QUESTION

Do Sections 87401 and 87402 prohibit you from doing any of the following:

Contracting with a county to perform a feasibility study concerning the establishment of an off-highway vehicle facility if the county applied for or received a state grant to conduct the feasibility study during your tenure as Deputy Director?

Representing the interests of off-highway vehicle enthusiasts before the Legislature or before the OHMVR Division or OHMVR Commission?

Writing a series of articles about the shortcomings of the California Off-Highway Vehicle Program for a major nationwide publication?

CONCLUSION

Sections 87401 and 87402 do not prohibit you from doing any of those activities.

ANALYSIS

Initially, you should note that Sections 87401 and 87402 apply to any former state administrative official who, as a state employee, participated in any proceeding involving specific parties, such as an application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, or arrest in any court or state administrative agency. As Deputy Director, you did not have decisionmaking authority, since decisions were made by the OHMVR Commission, and you did not have direct contact with parties in proceedings, since that was the job of the state employees whom you supervised. However, in our opinion, the fact that you had a supervisory position in the OHMVR Division means that, for purpose of Sections 87401 and 87402, you

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"participated" in those proceedings before the OHMVR Division and the OHMVR Commission in which you had a supervisory role. See Section 87400(d).

You should also be advised that when Sections 87401 and 87402 apply to a former state administrative official, his conduct is restricted throughout the duration of any proceeding in which he participated as a state employee, rather than a fixed number of years after his departure from state service. In other words, a former state administrative official who, as a state employee, participated in a proceeding involving specific parties is thereafter prohibited from, for compensation, representing, aiding, advising, counseling, consulting or assisting in representing any person in connection with that proceeding when the State of California is a party or has a direct and substantial interest.

The remaining question is what is a "proceeding" for purposes of Sections 87401 and 87402. Section 87400(c) provides that a "proceeding" is "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency" (emphasis added). Therefore, with regard to your specific question, an application by a county for grant funds to conduct a feasibility study regarding the establishment of an off-highway vehicle facility would be considered a "proceeding" for purposes of Sections 87401 and 87402.

As I explained above, Sections 87401 and 87402 apply throughout the duration of a proceeding in which the former state administrative official participated as a state employee. However, the former state administrative official is not prohibited from representing any party to the proceeding with regard to any other matter, including any new proceeding involving the same parties.

Applying this general analysis to your specific question, if a county applied for grant funds during your tenure as Deputy Director, the county would be a party to a proceeding in which you participated. Therefore, you cannot now represent the county on its grant application. However, you may represent the county on other matters. Therefore, Sections 87401 and 87402 would not prevent you from contracting with the county to perform the feasibility study which is funded by the grant. Once the county's grant application is approved or denied, the proceeding has ended, and your subsequent representation of any of the specific parties would occur only

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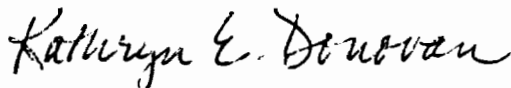
in a new proceeding, to which Sections 87401 and 87402 would not apply.

With regard to your other questions, you may represent off-highway vehicle enthusiasts in any matter before the Legislature and in any matter before the OHMVR Division or OHMVR Commission other than a proceeding involving specific parties in which you participated as Deputy Director. You should note that proceedings before the Legislature are not considered "proceedings" for purposes of Sections 87401 and 87402. Section 87400(b) and (c). In addition, your duties which concerned the general administration of the state's off-highway vehicle program would not be considered participation in a "proceeding" for purposes of Sections 87401 and 87402 unless specific parties were involved. For example, presentation of a proposal to the OHMVR Commission would not be considered a participation in a "proceeding" unless the proposal involved a specific party or parties, such as a proposal involving a grant application, rather than a proposal concerning the general administration and implementation of the state's off-highway vehicle program. Therefore, your participation, as Deputy Director, in legislative proceedings, or in general matters concerning the state's off-highway vehicle program, does not limit the persons or entities you may now represent in your business.

Finally, you may write a series of articles about California's Off-Highway Vehicle Program, since this activity would not be considered representing a person before any court or state administrative agency.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh

R. E. Sanford & Associates

9 August 1985

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RECREATIONAL LAND-USE CONSULTING
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RE: Your File No. A-85-080

Dear Ms. Donovan:

Thank you for your letter of May 1, 1985, however I am left with numerous questions. I realize that your answer could not be specific without more details. When I sent my letter to Director Briner, who is well aware of the duties that I performed as a State Employee, I was not aware that he would forward the letter to your office for an answer. Had I known that in advance, I could have supplied more details.

My first question deals with time-frames. To wit, are there any time-limits that pertain to Sections 87401 and 87402. In other words, for how long a period of time am I prohibited from such participation? Or, is the prohibition continuous with respect to the subject matter?

The balance of my questions deal with specific situations as will be listed later herein. However, I feel that for you to make a valid judgement you should be aware of the composition of the area of State Government for which I had responsibility.

1. My position title was Deputy Director of State Parks and Recreation having responsibility for the Off-Highway Motor Vehicle Recreation Division. The OHMVR Division consisted of two major functions: (1) the operation and management of the State Vehicular Recreation Areas (SVRA's), and (2) the Headquarters Staff activities connected with planning, acquisition, and development of SVRA's and the granting of special funds to local jurisdictions for the planning, acquisition, development, and operation of off-highway vehicle facilities. Both of these two separate functions were managed by supervisors who in turn reported directly to me.

2. The same law that established the OHMVR Division also created an OHMVR Commission comprised of seven members who make the final decisions on all aspects of the operation of the OHMVR Division, other than those dictated by State Law. To be more specific, there are no planning, acquisition, development, or grant operations until such time that the OHMVR Commission places its approval on the project. Also, please keep in mind that approval by the OHMVR Commission merely qualifies the item/project to be included in the State Budget for the applicable year and that the

item/project as it appears in the budget must also be approved by the State Legislature.

3. The point that I am attempting to establish with the two foregoing statements is that my role was to supervise the supervisor who in turn supervised the persons who prepared proposals for the OHMVR Commission to approve, alter, or disapprove. I did not make the 'approval, alter, or disapproval' decisions, nor did I attempt to influence the OHMVR Commission in its decisions with respect to such projects.

With the foregoing established, let me present some specific situations and questions:

1. Suppose that during my State Employment I was asked to explain the Off-Highway Vehicle Program to a county board of supervisors who felt that perhaps the Off-Highway Vehicle Program could relieve problems in their respective county. Let us further suppose that the county applied for a grant from the Off-Highway Vehicle Program to conduct a Feasibility Study for applications within their county and that the OHMVR Division Staff presented the grant application to the OHMVR Commission and it was approved and the county's grant request was funded by the State Legislature as a specific line-item of the applicable fiscal year budget. Further, let us suppose that the county did not have the in-house capability to perform the Feasibility Study and decided to sub-contract the preparation of the Feasibility Study to a private firm that is engaged in this exact type of work, or, in other words, recreational land-use consulting. In that recreational land-use consulting is the nature of my business, now that I have left State Employment (17 July 84), would my firm (I) be eligible to bid on a Request For Proposal (RFP) issued by the county? More specifically:

A. Would my firm (I) be eligible if I left State Employment after the OHMVR Commission made its decision to approve the project and submit it for approval by the State Legislature but prior to legislative approval?

B. Would my firm (I) be eligible if I left State Employment after the OHMVR Commission made its decision to approve the project and submit it for approval by the State Legislature but subsequent to legislative approval?

C. Would my firm (I) be eligible if I left State Employment prior to the time that the OHMVR Commission made its decision to approve the project?

D. Would I be eligible to work for another contractor who had bid on the RFP and who had been the successful bidder under any of the circumstances set forth above?

2. Suppose that near the end of my State Employment the OHMVR Commission directed the OHMVR Division Staff to study a particular site for possible inclusion as either an SVRA or as a county-operated off-highway vehicle facility, and that a member of the OHMVR Division Staff had visited the site and had begun to make the study at the time of my leaving State Employment. Suppose that subsequent to my termination of State Employment, the OHMVR Division Staff presented the project study to the OHMVR Commission and the commission voted to proceed with the granting of funds to the county for the purpose of conducting a Feasibility Study of the proposed site and the project was included as a line-item in the State Budget and was approved by the State Legislature. Let us again suppose that the county desired to sub-contract the preparation of the Feasibility Study to a private contractor:

A. Would my firm (I) be eligible to bid on an RFP from the county for the preparation of the Feasibility Study?

B. Would I be eligible to work for another contractor who bid upon the RFP for the preparation of the Feasibility Study and was successful?

3. Another set of questions pertain to legislative advocacy. Now that I have set forth the conditions that exist, i.e., the OHMVR Division that I headed does not make the final decisions, am I eligible to represent the interests of the off-highway vehicle enthusiasts (who will use these facilities) before the State Legislature? If not, how long must I wait before I can return to this former pursuit of a livelihood? Is the waiting period based upon time-limits or upon projects? What are the ramifications of performing the foregoing services without compensation as opposed to receiving compensation? Please answer this last question by category.

4. One final question pertains to a situation that I presently find myself in. A major nationwide publication has been soliciting me to write a series of articles upon the shortcomings of the California Off-Highway Vehicle Program as it is presently being administered by the current administration. This is the exact same thing that I did prior to my State Employment under the current and previous administrations since the program's inception. Is there anything to preclude me from doing this as long as I do not divulge any confidential information? By this latter statement, I mean that I would not divulge any information that is not already considered public information. It would just be a compilation of existing common knowledge.

I have tried to offer some specific situations and have attempted to offer explanations that should help you to make your decisions. Please do not hesitate to call upon me if you have further questions or if any of the foregoing is still unclear.

Respectfully,

A handwritten signature in cursive script, appearing to read "Russ Sanford".

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Roseville, CA 95678

Telephone: (916) 771-0353

cc: SP&R Director William S. Briner